

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION**

In re:

Joshua Sterling Wall and
Michelle Ilona Wall,

Debtors.

Case No. 13-cv-02945-RLV

The Bank of New York Mellon fka the
Bank of New York, as Trustee for the
Certificateholders of CWHEQ, Inc.,
Home Equity Asset Backed Certificates,
Series 2006-S7,

Appellant,

v.

Joshua Sterling Wall and
Michelle Ilona Wall,

Appellees.

**BANK OF AMERICA, N.A.’S MOTION AND MEMORANDUM OF LAW
TO DISMISS APPEAL**

Pursuant to Federal Rule of Civil Procedure 41, Appellant Bank of America, N.A. (“Bank of America”) moves for dismissal of this appeal with prejudice. In support of the Motion, Bank of America represents as follows:

The debtors, Joshua Sterling Wall and Michelle Ilona Wall (the “Debtors,” and together with Bank of America, the “Parties”), filed a chapter 7 petition in the U.S. Bankruptcy Court for the Northern District of Georgia. The Debtors’ house is subject to two mortgage liens, and, at the time Debtors’ motion was filed, Bank of America was the holder and/or servicer for the junior of the two liens on the Debtors’ property (the “Junior Lien”). Because the outstanding balance on the first mortgage exceeded the fair market value of the house, the Debtors filed a motion seeking to strip off the Junior Lien under Section 506(d) of the Bankruptcy Code. On July 15, 2013, Bank of America filed a response to the Debtors’ motion expressly reserving its right to seek appellate review of the bankruptcy court’s decision. Case No. 12-74207, Dkt. 30 (Bankr. N.D. Ga. July 15, 2013) In light of the Eleventh Circuit’s decisions in *McNeal v. GMAC Mortgage, LLC*, 477 F. App’x 562, 564 (11th Cir. 2012) and *Folendore v. Small Business Administration*, 862 F.2d 1537 (11th Cir. 1989), the bankruptcy court entered an Order granting the Debtors’ motion to strip Bank of America’s Junior Lien.

The bankruptcy court held that under the reasoning of *McNeal* and the holding of *Folendore*, Bank of America’s second-lien may be “stripped off,” or “voided,” under Section 506(d). Case No. 12-74207, Dkt. 31 (Bankr. N.D. Ga. July 24, 2013). Bank of America filed timely notice of appeal to this Court.

Since Bank of America filed its notice of appeal to this Court, however, the Junior Lien was service transferred to, and is now serviced by, Nationstar Mortgage LLC. Bank of America no longer holds or services the Junior Lien. Bank of America has informed Nationstar Mortgage LLC of the pendency of this case, and Nationstar Mortgage LLC has not responded to Bank of America's inquiries regarding this appeal.

For the foregoing reasons, Bank of America respectfully requests that the Court dismiss the appeal with prejudice.

Respectfully submitted,

/s/ J. Kelsey Grodzicki

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Dated: December 10, 2013

FONT CERTIFICATION

The undersigned counsel for Bank of America, N.A. hereby certifies that the within and foregoing was prepared using Times New Roman, 14-point font in accordance with LR 5.1(B).

This 10th day of December, 2013.

/s/ J. Kelsey Grodzicki
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CERTIFICATE OF SERVICE

I hereby certify that I have this 10th day of December, 2013, served all parties in this matter with the foregoing by CM/ECF and by placing a true and correct copy of same in the United States Mail, with first-class prepaid postage affixed thereto, properly addressed as follows:

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